DOCUMENT RESUME

ED 311 310 CG 021 787

AUTHOR Smith, Shelley; Lays, Julie, Ed.
TITLE Child Welfare in the States: Fifty State Survey Report.
INSTITUTION National Conference of State Legislatures, Denver, CO.
SPONS AGENCY Edna McConnell Clark Foundation, New York, N.Y.
REPORT NO ISBN-1-55516-618-0
PUB DATE Nov 86
GRANT 38-0077
NOTE 59p.; Separate oversize chart has been reduced in size and appended to end of document.
PUB TYPE Reports - Research/Technical (143)

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS Child Abuse; *Child Welfare; Financial Support; *Foster Care; Public Policy; *State Government; *State Legislation; *Trend Analysis

ABSTRACT

Despite a significant federal role in permanency planning as evidenced by Public Law 96-272, child welfare remains primarily a state responsibility and the states vary considerably in their approaches to it. In January 1986, a 50-state survey on major child welfare issues was conducted. The project was begun in 1983 as an attempt to ascertain legislative initiative and action on child welfare issues across all 50 states. The survey was designed to document state efforts to reduce foster care populations; keep families together; monitor child welfare services; and provide permanent homes for abused, neglected, and disturbed children who otherwise might drift indefinitely in the foster care system. One objective of the survey was to document the diversity of approaches that states have used to comply with Public Law 96-272. The questionnaire was sent to state legislative staff and state agency contacts in all 50 states. Data from the 46 responding states showed that states retained primary financial responsibility for child welfare and that the majority of states documented significant improvements in their child welfare systems. Survey trends for 15 responding states indicated progress in developing alternatives to foster care; diversification in legislative influence over child welfare policy was evident; and child welfare issues relating to permanency planning, foster care, and family preservation services were shown to be top concerns of the states. (ABL)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED311310

Child Welfare in the States

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

✓ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

Lisa Sacurto

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

Fifty State Survey Report

CG 021787

National Conference of State Legislatures

BEST COPY AVAILABLE

The National Conference of State Legislatures is the official representative of the country's 7,461 state lawmakers and their staffs.

NCSL was created in January 1975 from the merger of three organizations that served or represented state legislatures. NCSL is a nonpartisan organization with three objectives:

- To improve the quality and effectiveness of state legislatures;
- To foster interstate communication and cooperation; and
- To ensure states a strong, cohesive voice in the federal system.

The Conference operates from offices in Denver, Colorado, and Washington, D.C.

Executive Director: Earl S. Mackey

CHILD WELFARE IN THE STATES

FIFTY STATE SURVEY REPORT

by

Shelley Smith

Edited by

Julie Lays

National Conference of State Legislatures
1050 Seventeenth Street
Suite 2100
Denver, Colorado 80265
303/623-7800

November 1986

This publication was made possible through a grant from the Edna McConnell Clark Foundation, Grant No. 38-0077. Any opinions, findings, or conclusions expressed in this publication are those of the author and do not necessarily reflect the view of the foundation.

Copyright © 1986 by the National Conference of State Legislatures
ISBN-1-55516-618-0

TABLE OF CONTENTS

ACKNOWLEDGMENTS v

EXECUTIVE SUMMARY 1

BACKGROUND. 7

I. ADMISSION INTO THE CHILD WELFARE SYSTEM 13

A. Emergency Removal of Abused and Neglected Children 13

B. Abuse and Neglect: Adjudication 16

C. Voluntary Placement 19

II. PLANNING AND SERVICE DELIVERY 23

A. Reasonable Efforts Determination 27

B. Services to Parents and Children 28

C. Mandatory Written Case Plan 30

D. Parental Visitation Rights 31

E. Case Review 32

III. FOSTER CARE EXIT AND PERMANENT PLACEMENT ALTERNATIVES 35

A. Freeing Children for Adoption 35

B. Adoption Assistance 38

C. Permanent Placement Alternatives 39

IV. CHILD WELFARE TRENDS 43

NCSL ASSISTANCE 48

REFERENCES 49

NCSL CHILDREN, YOUTH, AND FAMILIES PROGRAM DESCRIPTION 50

CHILD WELFARE MATRIX . . . . . .Back Cover

ACKNOWLEDGMENTS

NCSL extends its sincere appreciation to the legislators, legislative staff, and state agency personnel who responded to the survey. Without their assistance, this report would not have been possible.

We also thank NCSL staff who helped produce this report: Ron Ours for his work on the 50-state matrix, Julie Lays for her editorial talents, Jodi Johnson and Barbara Houlik for their many hours of work in preparing the manuscript.

Finally, this report was prepared under contract with the Edna McConnell Clark Foundation. We wish to thank our project officers, Peter Forsythe and Susan Notkin, who provided valuable input and supported our efforts to increase interstate knowledge on child welfare issues.

The author assumes full responsibility for this report and would appreciate being alerted to any omissions or updates.

EXECUTIVE SUMMARY

State legislatures have a broad and expanding role in child welfare public policy. Legislators set statutory guidelines for judicial proceedings and provide policy directives to agencies that serve children and families. They also affect child welfare service provision through the appropriations process and direct program oversight. As attention increasingly has been focused on the plight of foster children and, most recently, on increased reports of child abuse and neglect, child welfare has emerged as a leading issue in the state legislatures.

Over the past six years, child welfare public policy in the 50 states has undergone considerable change. The high cost of foster care, or out-of-home placement, coupled with the negative impact on children of prolonged and unnecessary foster care, prompted a major revision of the federal laws regulating and funding child welfare services. The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272), in turn, provided financial incentives for state legislatures to examine policies governing child welfare services. In the last three years alone, states have enacted nearly 400 laws relating to child welfare.

State child welfare systems are the primary means by which states meet the needs of abused, neglected, and dependent children. Foster care is the most expensive form of child welfare service, as well as the most traumatic for the child. Systemic inadequacies in the child welfare system have resulted in so-called "foster care drift," in which thousands of children have literally grown up in a variety of foster homes, group homes, residential treatment centers, or other foster care settings. Often, children lingered

unnecessarily in foster care simply for lack of basic treatment and support services for their families. In addition, planning, monitoring, and follow-up procedures for foster children were at best, sketchy--at worst, nonexistent. While mental health professionals argue that stable and continuous relationships with adults are crucial to normal child development, increasing scrutiny of foster care in the 1970s revealed a system that encouraged family disintegration and failed to provide children with permanent, substitute home environments. Consequently, many state policymakers have used legislative avenues to introduce the concept of permanency planning into their child welfare systems.

Permanency planning incorporates a commitment to each child's right to a stable home environment--either with his or her natural family or with an adoptive one. Operationally, permanency planning entails both the provision of sufficient family support services and the establishment of coordinated systems to ensure adequate case planning, proper care, and timely decision making. In addition to traditional foster care, services to prevent foster care, to reunify families, along with adoption and other placement alternatives, increasingly are recognized as crucial components of a comprehensive, effective child welfare service delivery system. Systemic coordination between the courts that make custody decisions and agencies involved in service delivery also is considered vital to effective permanency planning.

Despite a significant federal role in permanency planning as evidenced by P.L. 96-272, child welfare remains primarily a state responsibility and the states vary considerably in their approaches to it. In fact, some state child welfare reforms--most notably New York's Child Welfare Reform Act of 1979--predated the federal initiative. Permanency planning efforts in the states may be designed to prevent foster care placements, to reduce their

duration, or both. Most states have established adoption subsidy programs to overcome financial barriers to the adoption of children with certain handicaps; others have mandated comprehensive family support services in an effort to eliminate the need for foster care.

In January 1986, the Child Welfare Reform Project of the National Conference of State Legislatures (NCSL) conducted a 50-state survey on major child welfare issues. The project, funded by the Edna McConnell Clark Foundation, was begun in 1983 as a unique attempt to ascertain legislative initiative and action on child welfare issues across all 50 states.

The survey was designed to document state efforts to reduce foster care populations, keep families together, monitor child welfare services, and provide permanent homes for abused, neglected, and disturbed children who otherwise might remain drifting indefinitely in the foster care system. One objective of the survey was to document the diversity of approaches that states have used to comply with P.L. 96-272.

The questionnaire was sent to state legislative staff and state agency contacts in all 50 states. Respondents from 46 states included state agency staff, legislative and committee staff, legislative counsel, and legislative council research analysts. This report represents an analysis of the answers furnished by responding states. In addition, NCSL staff reviewed survey documentation provided and attempted to correct apparent discrepencies. Four states did not participate in the mail survey. To complete the comprehensive child welfare public policy matrix (inside back cover), NCSL staff conducted secondary research.

The survey instrument was complex by necessity. Survey respondents were asked to document state law related to a variety of child welfare issues

such as: court proceedings related to abuse and neglect, termination of parental rights procedures, and adoption assistance guidelines. For these 15 questions related to procedural and process components of the child welfare system, respondents were also asked to list any applicable administrative regulations or rules. Results of this section of the survey are presented on pages 13 through 42.

Information on child welfare expenditures, foster care placement duration, and population figures over a five-year period also was solicited in the survey. The data obtained were limited in comparability and comprehensiveness, as states differed greatly in the extent and quality of responses. Still, some trends for the states providing extensive data are noteworthy. These results, together with respondents' opinions regarding major child welfare issues, are presented in section IV.

This report is designed for use by state legislators and staff to increase their knowledge of child welfare public policy issues and to promote awareness of unique initiatives among state policymakers. It provides a mechanism for legislators to compare specific components of their state child welfare systems with others throughout the country.

Major findings of the survey include the following:

- o States retain primary financial responsibility for child welfare services. Sixteen responding states report that the federal share of child welfare expenditures actually declined by 8 percent between 1981 and 1985.
- o Using self-selected indicators of progress in child welfare within a five-year period, the majority of responding states document significant improvements in their child welfare service systems. For example, **Delaware** reports that the average length of stay for children in foster care was reduced from nearly seven years in 1979 to approximately 1.6 years by 1983; **South Dakota** reports a decrease of 35 percent in its average annual foster care population between 1981 and 1985.

- Survey trends for 15 responding states indicate progress in developing alternatives to foster care. These states reported that expenditures for adoption assistance, foster care prevention, and family reunification services increased by 24 percent between 1981 and 1985. Still, alternatives account for only a fraction of these states' total child welfare expenditures.

- Survey results reveal diversification in legislative influence over child welfare public policy. Specifically, legislators retain primary responsibility for policies governing state intervention in the family, which includes: child abuse reporting mechanisms; emergency removal of children; adjudication of abused and neglected children; legal protections for parents and children; and termination of parental rights. Traditionally, these issues are within the purview of state legislatures; however, recent legislative initiatives are increasingly sophisticated, focusing on programming and child welfare agency operations. According to the survey, much statutory change since 1983 has been in such areas as state efforts to provide foster care preventive and family reunification services.

- Survey respondents rank child welfare issues relating to permanency planning, foster care, and family preservation services as top concerns. Other concerns in rank order are: declining resources for services, increasing number and complexity of reported child abuse cases, insufficient casework staff, and early child abuse detection and prevention.

The survey results do not reveal one model comprehensive state child welfare system. Rather, a variety of exemplary components are identified in a number of state statutes. A selected sample of state approaches is incorporated within the following narrative.

BACKGROUND

The governmental right to intervene in the relationship between parent and child is grounded in an 1838 decision by the Pennsylvania Supreme Court. The decision upheld the state's right to intern a child in the Philadelphia House of Refuge over the objections of her father. Thus, the doctrine of *parens patriae* or "guardianship by the community" was introduced into the American legal system.

Today, state child welfare systems comprise the means by which states perform their traditional function as guardian for children who lack willing or able parents. State legislatures serve a primary role in determining how well these systems function.

Recently, increasing public attention has been focused on the plight of abused and neglected children. According to the American Humane Association, national reports of child abuse and neglect had increased by nearly 160 percent between 1976 and 1984. This includes a 17-fold increase in reports of sexual abuse of children.

State legislators have responded with a broad array of initiatives designed to critically appraise and improve child welfare service systems. Since 1983, states have enacted nearly 1,000 laws relating to child abuse and child welfare, ranging from improved treatment of child victims in courtroom proceedings to the establishment of citizen foster care review boards to monitor children in foster care settings.

All states have a statutory procedure for reporting cases of suspected abuse or neglect. Likewise, all states provide for the adjudication of a

child as abused or neglected. Once abuse is determined by the court, the child may be placed in foster care. The juvenile justice system is also a potential track into foster care. When a court has jurisdiction for a minor because of delinquency or status offense, it may order foster care placement. Sometimes, children enter foster care through the state mental health system. In certain situations, placement is initiated by the family; many states recognize that parents may be unable to cope with their children for a variety of reasons. As a result, temporary voluntary foster care placement may be allowed.

The states vary considerably in the coordination of systems that refer children for child welfare service. Likewise, the characteristics of children in foster care vary in terms of their history of abuse, physical or mental disorders, and behavioral problems. Some states operate distinct child welfare, juvenile justice, and mental health systems for different populations of children with separate residential programming for each. One exception is **Florida**, where all youth services are consolidated under one administrative structure. In several states, children may be moved from one system to the other depending on their treatment needs.

Abuse and neglect proceedings, however, remain the usual points of entry into child welfare foster care for most children. Child welfare philosophy regarding proper treatment of such children has undergone profound changes.

Traditionally, once the state intervened in the family setting and determined that a child was neglected or abused, the primary aim of the service system was to remove the child from what was deemed a "bad" home environment. Children were placed in foster care for their own good--all too frequently to be forgotten once placed.

In the 1970s, new developments in child welfare research and practice began to focus on the child's need for a stable, consistent, and nurturing home environment. The negative impact suffered by children, who were literally growing up "drifting" among a variety of temporary foster care placements, began to be addressed. Child welfare practice also was influenced by the growth of the concepts of "deinstitutionalization," which emphasized the rehabilitative benefits of community-based treatment alternatives, and "family systems theory," which focused on treating the family as a unit.

By 1977 the number of children in the foster care system had risen to over 1.5 million, and increasing scrutiny decried the circumstances of these children. Often, children received little in the way of treatment services and were passed among a variety of social workers, service systems, and foster home placements. Children who returned to their families frequently faced the same problems that precipitated their removal, since the families had received no supportive or treatment services.

On the federal level, concerns about abuse in the foster care system culminated in passage of the Adoption Assistance and Child Welfare Act of 1980 (P.L 96-272). The purpose of the law is to reform the child welfare system by: reducing the number of children entering the foster care system through increased family support services; ensuring that children placed in foster care are placed in the least restrictive, most home-like environment; facilitating the timely return of children to their families with supportive services; promoting the adoption of children who cannot return home; and ensuring proper planning and care for children while in foster care.

Since the passage of P.L. 96-272, important changes have occurred in states' orientation toward child welfare services. The concept of permanency planning has become a primary focus for child welfare services. Simply stated, permanency planning provides that systems should be designed to either reunite children with their natural families or, failing this, to provide those children with permanent adoptive homes. Thus, a critical objective of the child welfare system is to move children out of foster care.

Legislative initiatives can promote permanency planning at a variety of crucial points throughout the child welfare system. For example, foster care population reductions can be accomplished at the entry level by establishing policies that divert children from unnecessary foster care. Among the states that have pioneered foster care diversion through mandated preventive services are: **California, New York, Washington**, and **Wisconsin**.

Population reductions also can be achieved at the other end of the spectrum through the imposition of a dispositional deadline--that is, a strict timetable for decision making regarding a child's exit from foster care. Ideally, public policy is coordinated throughout foster care entry, placement, and exit with strategies that promote permanency for the state's children and families. Although such policies can be implemented by state administrative rule alone, statutory direction is preferable in terms of providing maximum guidance for consistent, appropriate action by child welfare agencies and the courts.

In addition to process and procedural statutes, state legislators affect child welfare systems through the budget and appropriations process. Here, too, permanency planning has important benefits for the state. The Children's Defense Fund (CDF) reports that nationally it costs approximately

$4,000 a year to maintain a child in a foster family home and $16,000 or more to maintain a child in an institution. According to CDF, it costs approximately $2,300 to provide the special family preservation services necessary to keep a child at home. To the state, the costs of maintaining a child in foster care can effectively be reduced by shifting dollars and efforts toward prevention, family reunification, and adoption.

Examining state child welfare systems requires unraveling a combination of legislation, rule, policy, and judicial action. Federal initiatives, while providing a blueprint for reform, do not dictate the most effective, efficient means of implementing requirements. Because each system is unique, states employ a variety of means to implement specific reforms. To date, comprehensive statutory approaches to child welfare reform have been few. Initially, child welfare reform was reactive, with the requirements of federal law creating deadlines that further argued for the quickest, easiest means of implementation. In a few states, including **Massachusetts, Missouri,** and **New Mexico**, child welfare reform has been fueled by litigation.

In the NCSL survey, respondents were asked to indicate extant policies in their state child welfare systems. Affirmative answers required that respondents document applicable statutes and administrative regulations or rules. These methods of child welfare reform implementation are most adaptable to the state legislative arena. In the first case, legislative interest is obvious; in the latter, state legislators maintain an increasing amount of oversight and influence on this administrative process. This report concentrates on statutory initiatives and notes rules and regulations only when they serve as the sole authority for specific child welfare reform.

Survey results are reported in this document under four broad categories:

I. ADMISSION INTO THE CHILD WELFARE SYSTEM;

II. PLANNING AND SERVICE DELIVERY;

III. FOSTER CARE EXIT AND PERMANENT PLACEMENT ALTERNATIVES; and

IV. CHILD WELFARE TRENDS.

Sections I - III attempt to outline the child welfare system as an actual process. Thus, the general sections cover: first, how children enter the child welfare system; second, how they and their families are served after admission; and third, how children leave the child welfare system. The complex nature of the system requires an examination of numerous policies and procedures. Consequently, each section is broken down into several categories with several pertinent public policies identified per category. For each general section and category, explanatory notes are provided, followed by a summary of actual state-by-state survey findings. Section IV outlines general information on child welfare issues and financing provided by selected states in the survey.

I. ADMISSION INTO THE CHILD WELFARE SYSTEM

A. Emergency Removal of Abused and Neglected Children

Historically, the state intervenes to determine if a child has been abused or neglected. Investigations of abuse or neglect reports are conducted to determine whether the report is substantiated and whether the child is in immediate danger and removal from the home is warranted. Normally, a court order is required to remove a child prior to a formal hearing to determine abuse or neglect. In extreme situations, the child's emergency removal may be necessary before an investigation can be completed or a court order obtained. State laws regulating these procedures balance considerations of child safety and parental rights. To determine how states balance these interests, the survey measured specific emergency removal provisions relating to:

1) Grounds for removal;
2) Procedural protections for both parents and children; and
3) The type of environment from which a child may be removed.

These provisions are designed to facilitate appropriate decision making in volatile situations that may require rapid intervention.

1) *Grounds for Removal*

In the survey, the majority of states recognized the need to articulate standards, or grounds, for emergency removal that balance the risks to the child's safety with the potential harm to the child of unnecessary family

disruption. Ninety-two percent of the states (46) reported that grounds for removal are specified by state statutes.

Emergency removal statutes are intentionally terse, authorizing certain professionals to assume custody of children who are in life threatening situations. **Alabama**'s statute authorizes law enforcement agents, public child welfare agency personnel, and physicians to assume protective custody for up to 72 hours when a child's life or health is in imminent danger. Emergency removal provisions under **Iowa** law likewise make use of the imminent danger criterion; however, the statute articulates a decided preference for judicial review of such actions. Applicability of the law is limited to situations where time constraints preclude the possibility of obtaining a court order. In contrast, **Louisiana** empowers law enforcement and probation officers with broad authority for emergency removal when "the child's surroundings are such as to endanger his welfare, and immediate removal appears to be necessary for his protection."

Summary of Findings: *Grounds for Removal*

With the exceptions of **Arizona, Delaware, Mississippi, and Vermont**, the majority of states (46) identified statutory grounds for emergency removal.

2) *Procedural Protections for Children and Parents*

Procedural safeguards for children and parents also are provided by most states according to survey results. The nature and extent of such protections are not specified in the survey. Review of the relevant statutes indicates that a wide variety of protections are incorporated in state laws. Basic parental notification rights are included in many state laws, including those of **Illinois** and **Virginia**. The state of **Washington** requires written parental notification of the reasons for the emergency removal. The

statement must be left with the parent or, if absent, at the parent's residence, and it must include the telephone number of the pertinent child protection agency. Numerous states require a prompt court hearing subsequent to the removal.

Summary of Findings: *Procedural Protections*

For Children

Forty-seven states allow procedural safeguards for children in statutes governing emergency removal. **Vermont** implements protections solely by rule or regulation, while **Montana** and **North Dakota** report no procedural protections for children.

For Parents

Forty-four states statutorily impose procedures to protect parental rights in emergency removal situations (**Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin,** and **Wyoming).**

3) *Emergency Removal from Settings Outside the Home*

Emergency removal of children from institutional settings is specifically addressed in fewer state statutes. In fact, the degree of specificity among the 41 states reporting an ability to remove children from external settings varies greatly. In **Iowa**, for example, the statute language identifies child day care environments. Other state statutes do not identify specific environments but are routinely interpreted as applying to a variety of situations. With the recent media attention regarding abuse of children in day care and other institutional settings, however, such provisions may receive increased legislative scrutiny.

Summary of Findings: *Emergency Removal from External Settings*

Forty-one states indicate a statutory basis for removing children from external settings such as day care, foster homes, and other institutional settings (**Alabama, Alaska, Arkansas, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, and Wyoming**). Vermont provides for removal by administrative regulation.

B. Abuse and Neglect: Adjudication

A court finding of abuse or neglect is required for more prolonged intervention by the state. Again, state statutes governing abuse and neglect adjudications are designed to balance child safety and parental rights. The survey documents states' efforts in the following areas:

1) Definitions of abuse and neglect;

2) Legal representation for children and parents; and

3) Statutory grounds for removal from home.

1) *Definitions of Abuse and Neglect*

The statutory definitions of abuse and neglect determine the parameters of the court's deliberations. Generally, the consistency of judicial decisions depends, in part, on the specificity of the definitions. In addition, the definitions serve to articulate the state's interest in ensuring appropriate intervention in family life. Statutes should be broad enough to ensure the child's health and well-being but not so vague as to encourage arbitrary and unlimited intrusion in familial relationships.

Abuse statutes are often quite specific. For example, **New York**'s definition covers abuse that entails risk of death, serious injury, and sexual abuse of children. The state's neglect provisions are generally broader, encompassing situations where children suffer physical, mental, or emotional impairment, or risk of damage attributable to the parents failure to exercise reasonable care. Many states incorporate similar language in their abuse and neglect statutes.

But, the degree of specificity among state statutes varies considerably. The specificity of the **New York** neglect statute is illustrated by the following excerpt covering parental drug and alcohol abuse:

> ...where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired...

The **New York** statute spells out the state's interest in recognizing parental drug rehabilitation efforts unless the parent's behavior harms the child. By contrast, **Virginia**'s neglect statute does not address parental drug or alcohol addiction; however, such conditions can be considered via the state's broad definition of a neglected child as one whose parent "neglects or refuses to provide care necessary for his health."

Summary of Findings: *Definitions of Abuse and Neglect*

All states except **Texas** provide statutory definitions of abuse and neglect. Both **Arizona** and **Texas** report that legislation is pending.

2) *Legal Representation for Children and Parents*

Abuse and neglect proceedings are complicated. Both parents and children can be intimidated by the legal system. Legal representation seeks to protect vulnerable parents and children. Further, it can reduce future litigation by ensuring that all parties' legal rights are considered. More states address legal counsel for children than for parents. States implement legal representation primarily by statute. Most often, legal representation is not mandated, but rather the authority to appoint legal counsel is allowed. Counsel for parents is most often predicated upon their financial circumstances, as in other legal proceedings.

Summary of Findings: *Legal Representation*

For Children

With the exception of **Arizona**, 49 states provide statutory authority to appoint legal representation for children in abuse and neglect proceedings.

For Parents

Forty statutes allow legal representation for parents in abuse and neglect proceedings (**Alabama, Arkansas, California, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Virginia, Washington, West Virginia, Wisconsin**, and **Wyoming**).

3) *Grounds for Removal from Home*

Following a determination of abuse or neglect, the court considers dispositional alternatives. Options may include allowing the child to remain at home with supportive family services, foster care placement, or institutionalization. To provide clear-cut, precise guidelines for judicial decisions regarding out-of-home placement, grounds for removal following an adjudication of abuse or neglect are specified by state law. Most states

include language specifying that the best interests of the child are to be considered. **Wisconsin**'s statute includes additional language further articulating dispositional considerations for the court:

> "The disposition shall employ those means necessary to maintain and protect the child's well-being, which are the least restrictive of the rights of the parent or child and which assure the care, treatment, or rehabilitation of the child and family. Wherever possible the family unit shall be preserved and there shall be a policy of transferring custody from the parent only where there is no less drastic alternative."

A judicial finding of reasonable foster care prevention or family reunification efforts on the part of the state also is required in any **Wisconsin** court order for out-of-home placement. (The reasonable efforts determination required by P.L. 96-272 also can affect pre-adjudicatory custody decisions. See pages 27-28, for a detailed discussion of the requirement.)

Summary of Findings: *Grounds for Removal*

Forty-five state statutes, excluding **Arizona, Connecticut, Montana, New Hampshire** and **Oregon**, specify statutory grounds for removing a child from the home following an adjudication of abuse or neglect.

C. Voluntary Placement

All states allow voluntary placement of children in foster care under certain circumstances. P.L. 96-272 requires certain protections for these children, if federal reimbursement is requested. A written placement agreement specifying parental obligations and rights, including the perogative to revoke the agreement, and judicial review of the placement within six months, are basic federal requirements. These protections are designed to curb potential abuse. In the past, such arrangements sometimes have resulted in prolonged, unnecessary foster care. Logically, voluntarily placed

children are entitled to the same rights and methods of good practice as children who come into foster care by court order. The survey measured three such indicators:

1) Written placement agreement;

2) Judicial or administrative review of placement; and

3) Duration of placement without court order.

Compared to legislative purview of court-ordered placements, the survey showed less oversight of voluntary care. Still, 66 percent of the states (33) reported at least one of the protections by statute. An additional nine states implement one or more protections by court rule or administrative regulation.

1) *Written Placement Agreement*

When a child is placed out of the home, a written placement agreement clearly spells out the rights and obligations of the parents, child, and agency. Without such an agreement, it is difficult to measure the child's progress or the parents' ability to resume responsibility. Future court action, including proceedings for termination of parental rights, often require a record of the reasons for placement, the voluntary nature of the placement, and whether the parents understood the possible legal consequences of the placement. Sometimes agency workers suggest voluntary placement when there is insufficient evidence to prove legally that the home is unsuitable. Particularly in such cases, detailed documentation should be required to ensure that parents are not coerced into a voluntary placement agreement.

Summary of Findings: *Written Placement Agreement*

Slightly less than one-half of the states (24) provide written placement agreements for voluntarily placed children (**Alaska, Arizona, California, Colorado, Delaware, Florida, Illinois, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Ohio, South Dakota, Tennessee, West Virginia,** and **Wisconsin**).

Fourteen additional states implement voluntary written placement agreements by rule or regulation (**Alabama, Arkansas, Connecticut, Georgia, Idaho, Louisiana, North Dakota, Oregon, Pennsylvania, South Carolina, Texas, Utah, Virginia, and Wyoming**).

2) *Review of Voluntary Placement*

In 1983, the American Bar Association National Legal Resource Center for Child Advocacy and Protection reported that approximately one-half of all children who enter foster care through voluntary placement never return home. Thus, it is important to ensure that permanency planning efforts are extended to voluntarily placed children. The system should be flexible enough to assist families whose children may benefit from a temporary, voluntary placement without the added burden of court jurisdiction. But public policy should be designed to ensure that voluntarily placed children do not get caught up in an indefinite foster care limbo. In an attempt to balance family autonomy with concerns of foster care drift, P.L. 96-272 requires regular review of the case of each child in state-supervised, federally reimbursed foster care, including each voluntarily placed child.

Summary of Findings: *Review of Voluntary Placement*

Twenty-one states have statutory provisions for mandatory judicial or administrative review of voluntary placements (**Arizona, Colorado, Connecticut, Delaware, Florida, Idaho, Iowa, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Rhode Island, Tennessee,** and **Texas**).

Ten states use administrative regulations or court rules to implement review (**Alabama, Alaska, Georgia, Illinois, Louisiana, Maine, Pennsylvania, South Carolina, Utah,** and **Virginia**).

3) *Duration of Voluntary Placement*

Planning to facilitate the return of the child is at least as important for a voluntarily placed child as it is for other foster children. A requirement for time-limited decision making helps ensure that voluntarily placed children are properly monitored. Whether the goal is family reunification or adoption, a timetable can assist in moving toward the ultimate goal of establishing a permanent home for the child. Federal law requires a dispositional hearing for all children who are in foster care 18 months or longer. At that time, definitive choices among permanent options should be made. This hearing should consider specific options including: return home, adoption, determinate or long-term foster care, independent living arrangements, or other care based on special circumstances that are specifically identified. **Delaware** mandates review for all children, including those who are voluntarily placed. Others place specific time limits on voluntary placements without court involvement. **Colorado**, for example, requires a court review of voluntary placements within 90 days.

Summary of Findings: *Duration of Voluntary Placement*

Forty-six percent of the states (23) place statutory time limits on voluntary placements (**Alaska, Arizona, California, Colorado, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Rhode Island, Tennessee, Texas, Vermont, Virginia, West Virginia,** and **Wisconsin**).

Thirty-two percent of the states (16) report administrative limits on the duration of voluntary placements (**Alabama, Arkansas, Connecticut, Florida, Georgia, Iowa, Louisiana, Maine, Mississippi, North Dakota, Oregon, Pennsylvania, South Carolina, Utah, Washington,** and **Wyoming**).

II. PLANNING AND SERVICE DELIVERY

The provision of adequate alternative services is critical in any effort to reduce the inappropriate use of foster care. A number of states are exploring a range of home-based services as an alternative to traditional foster care. Typically, home-based or family-centered services focus on the family unit in its own environment--the home. According to the Minnesota Family Based Services Handbook:

> Family based services are becoming a significant part of the children and family service delivery system and can be readily distinguished from traditional services in several ways. The focus of family based services is on the family as a whole rather than on one family member. The service objective is to strengthen families so they can fulfill their caregiving function and provide a healthy, growth-producing, and safe environment for family members. In this way family dissolution and out of home placement of children are prevented. Placements, when necessary, are shorter, more appropriate to the needs of the family, and focus on reunification of the family at the earliest date. Family based services, then, are an investment of staff, other services, and resources in early intervention with families in need, prevention of family dissolution, and reunification of separated families.

A promising option currently offered in several states involves the provision of a type of very intensive, concentrated home-based service, known collectively as family preservation services. Family preservation services include: 24-hour crisis intervention, therapy, parenting education, skills development, day care, employment assistance, housing, and other basic supportive services. Many home-based programs provide similar services. What distinguishes family preservation services from other home-based programs is their intensity level and brief duration. Typically services are provided within three months or less. Family preservation workers have extremely small case loads of from two to five families, compared to traditional child welfare workers who may be responsible for between 25 to 50 children simul-

taneously. Consequently, family preservation service workers can devote maximum attention to each family. In fact, family preservation workers provide, within strict time limits, as much or more service to a family as would be provided over a year's time through more traditional service programs. Despite the small case loads, the cost benefits of family preservation services are dramatic when compared to costs for residential care that typically lasts just under two years.

Annual costs for foster family care range from $2,500 per child in **Nevada** to $7,500 per child in **New York**. Institutional care is substantially costlier, averaging as much as $25,000 per child in **New York**. Home-based programs that successfully divert children from residential placements can offer substantial long-term direct service cost benefits. Of course, such direct service cost comparisons between residential and home-based programs do not reflect outlays for supportive services such as housing, income maintenance, or medical assistance. Home-based programs frequently connect families with such services. Still, most experts speculate that home-based programs reduce total costs over the long term, given the substantial savings in direct costs associated with such innovative programs.

Chart 1 from the Child Welfare League of America's Family Preservation Project illustrates the cost of a variety of home-based programs. As indicated, Homebuilders, based in **Washington** state, has the highest success rate (98 percent) and is considered a pioneer in the development of short-term, intensive, crisis intervention services. The program has been providing family preservation services since 1974 and receives 100 percent of its funding for service delivery from the state of **Washington**.

CHART 1

SERVICE AND COST RESULTS: FAMILY-BASED PROGRAMS

	Average Duration of Service	Average Cost/ Family	Success (maintaining intact family at service termination)
Families Inc. West Branch, Iowa	4.5 months	$ 4,000	91%
Family Strength Concord, N.H.	4.4 months	$ 4,224	67%
Home & Community Treatment Madison, Wis.	1 year	$10,000	66-75%
Homebuilders Tacoma, Wash.	4-6 weeks	$ 2,600	98%
Intensive Family Support Hillside Children's Center Rochester, N.Y.	10 months	$ 4,213	90%
Oregon Intensive Family Services	90 days	$ 1,131	91%

1986, Family Preservation Project, Child Welfare League of America.

Home-based programs increasingly are becoming a part of states' child welfare service delivery systems. The "ideal" system includes a diverse array of services along a continuum of care from the least to the most restrictive. Without alternatives, children too often are placed in foster care simply because it is the only available option. In a comprehensive continuum of care, services are designed for the particular needs of individual children and their families.

In addition to comprehensive service development, policy initiatives to encourage the use of alternatives in lieu of more expensive residential programming is a potent legislative tool. Public policy can influence judicial placement decisions by specifying a preference for serving families at home. Such policies notify the judicial branch of the state's interest in family autonomy. It also demonstrates a belief in the ability of chronic, troubled families to change patterns of behavior with supportive services. More important, halting patterns of abuse and neglect in the home offers a more secure environment for every child in the family.

The NCSL survey attempted to review state efforts in planning and comprehensive service provision by documenting:

A) Reasonable efforts determination;

B) Services for children and families;

C) Mandatory written case plan;

D) Parental visitation rights; and

E) Case review.

A. Reasonable Efforts Determination

The court holds the ultimate responsibility for placement decisions. One strategy that state legislatures have used to influence the judiciary is to require courts to determine whether reasonable efforts have been made by the state to prevent or eliminate the need for foster care. A judicial determination is required for states to receive federal foster care funds under P.L. 96-272. By requiring a finding of reasonable efforts, the court is obliged to monitor carefully the entry of children into foster care and to ensure that the state agency provides appropriate services to preserve families whenever possible. It further encourages cooperation between the judicial and executive branches in reuniting families, if out-of-home placement is necessary. If this legislative direction is not provided, the court or its designee retains wide discretion in placement decisions. Less familiar service options, such as family preservation services, may be disregarded. The "reasonable efforts determination" language also creates a specific mandate for the state agency in comprehensive service development.

According to the American Bar Association National Legal Resource Center on Child Advocacy and Protection, 20 states have adopted reasonable efforts statutes since 1983. Most state statutes mimic federal language. Depending on the state, the determination occurs at one or more of several different stages, including: (1) emergency removal hearing (usually ex parte); (2) shelter care hearing (held two to 10 days after an emergency removal, also called detention, probable cause, or continued custody hearing); (3) adjudicatory or fact-finding hearing; (4) disposition hearing; and (5) foster care review hearings. In general, the more stages at which reasonable efforts are required and the more people who are involved in the process, the greater is the potential impact for foster care diversion. The Florida

statute not only requires reasonable efforts at several stages, but also specifies considerations to be made by the court as follows:

> (c) In support of its determination as to whether reasonable efforts have been made, the court shall:
>
> 1. Enter findings as to whether or not prevention or reunification efforts were indicated;
> 2. If prevention or reunification efforts were indicated, include a brief description of what appropriate and available prevention and reunification efforts were made; and
> 3. Indicate why further efforts could or could not have prevented or shortened the separation of the family.
>
> Fla. Stat. Ann 39.41 (2)(c) (West 1984)

Summary of Findings: *Reasonable Efforts Determination*

Twenty states provide a statutory mandate (**Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Maine, Massachusetts, Mississippi, Missouri, Nevada, New Mexico, New York, Oklahoma, Oregon, Virginia, Washington,** and **Wisconsin**).

Regulations or rules are used in five states to implement reasonable efforts (**Alabama, Alaska, Rhode Island, Tennessee,** and **Utah**). **Idaho, Kansas,** and **North Carolina** report pending legislation in this area.

B. Services to Parents and Children

As a practical matter, the judicial determination of reasonable state efforts to preserve family integrity is predicated on the availability of appropriate services for families in crisis. Legally, however, lack of services is no defense for states facing child welfare litigation. Most states provide some services for abused and neglected children and their families, including counseling, child care, drug and alcohol treatment, homemaker services, and so-called "hard services" like financial, housing, food, clothing, and energy assistance. The survey found 42 states with at least general statutory authority for the provision of services to children and families.

Several states are experimenting with intensive family-based services in an effort to effect permanency planning goals. In **Iowa**, a pilot program of home-based family treatment was initially financed with funds transferred from the institutional budget when the state closed one of its juvenile homes in 1974. Today, the program is offered on a statewide basis. The **Minnesota** Legislature recently decided to focus its state fiscal resources on alternatives in lieu of reimbursing counties for foster care.

In **New York**, core services that can be offered at the discretion of the state agency are outlined. **California**, on the other hand, establishes specific preventive and family reunification programs that must be available on a statewide basis. The emergency response component of the **California** prevention program specifies required services, including: intake, crisis intervention, counseling, shelter, and transportation. Maintenance preventive services, which must be available in **California**, are counseling, in-home caretakers, respite care, parenting training, and homemaker services. A similar core of reunification services is available for families from which a child has been removed under court order. The **California** and **New York** statutes exemplify a trend toward more sophisticated, comprehensive approaches to child welfare legislation.

Statutory authority for foster care prevention and family reunification services is increasingly crucial. Public agencies in many states must prioritize services in the face of budget constraints. According to the survey, the majority of states have established at least a general directive for services by statute.

Summary of Findings: *Services to Parents and Children*

Foster Care Preventive Services

Twenty-nine states have a specific statutory basis for preventive services (**Alaska, Arkansas, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Rhode Island, Utah, Washington, West Virginia,** and **Wisconsin**).

Reunification Services

Thirty state statutes specify reunification programs (**Alaska, Arkansas, California, Colorado, Connecticut, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Rhode Island, South Carolina, Utah, Washington, West Virginia,** and **Wisconsin**).

North Carolina, South Carolina, and **Virginia** report pending implementation of services for parents or children. **Alabama, Arizona, Maryland, Pennsylvania,** and **Texas** provide services via administrative regulation.

C. Mandatory Written Case Plan

Case plans are written documents that state the goals and objectives of service delivery, the actions to be taken by all parties, the services to be provided, and the dates by which actions should be completed.

Case plans provide a valuable tool for diagnosis, determination of service needs, and establishment of therapeutic goals against which progress can be measured. Well-documented case plans are also important tools in court proceedings to terminate parental rights. Federal law mandates the use of case plans in child welfare practice and most states require them by statute. Some statutes contain further directives that case plans recommend least restrictive service options. **Maine** law contains a family reunification plan outlining in detail both the state agency's and the parents'

responsibilities. Under the **Maine** law the state department must among other items:

> (1) Develop a rehabilitation and reunification plan which shall include the following:
>
> (a) The reasons for the child's removal;
> (b) Any changes which must occur for the child to return home;
> (c) Rehabilitation services which must be completed satisfactorily prior to the return home;
> (d) Services available to assist the parents in rehabilitating and reunifying with the child, including reasonable transportation within the area in which the child is located for visits if the parents are unable to afford that transportation;
> (e) A schedule of visits between the child and the parents when visits are not detrimental to the child's best interests, including any special conditions under which the visits shall take place;
> (f) A reasonable time schedule for proposed reunification which is reasonably calculated to meet the child's needs; and
> (g) A delineation of the financial responsibilities of the parents and the department during the reunification process.

Summary of Findings: *Written Case Plans*

Thirty-three states require case plans by statute (**Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Virginia, Washington, West Virginia, Wisconsin,** and **Wyoming**).

Fourteen states implement case plan requirements by rule (**Alabama, Georgia, Idaho, Maryland, Massachusetts, Michigan, Nebraska, New Mexico, North Carolina, North Dakota, Pennsylvania, South Carolina, Texas,** and **Utah**).

D. Parental Visitation Rights

One of the most critical factors in successfully reuniting families with children in foster care, is maintaining and strengthening parental ties through frequent visits while the child is in placement. As illustrated in the preceding excerpt from **Maine** law, parental visitation rights can be statutorily protected with the goal of facilitating family reunification.

Summary of Findings: *Parental Visitation Rights*

Only 42 percent of the states (21) statutorily protect the visitation rights of parents with children in out-of-home placement (**Alaska, Arkansas, California, Florida, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, Ohio, Texas, Virginia,** and **Wisconsin**).

An additional 19 states protect parental visitation rights by rule or regulation (**Alabama, Georgia, Idaho, Iowa, Louisiana, Michigan, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah,** and **West Virginia**).

E. Case Review

Periodic review of children in foster care is necessary to monitor the progress of foster children and their families and to provide a forum to protect their interests. Such reviews provide a systematic method of scrutinizing each child's case to determine whether the child can be returned home, is free for adoption, or whether further action is needed to ensure a permanent, stable home for the child. Consequently, P.L. 96-272 requires review of each state-supervised child's case by a court, or an administrative body, at least every six months. In addition, a "dispositional" hearing by a court or court-approved body must decide the permanent or long-term status of the child within 18 months. For survey purposes, review includes procedures conducted by court, administrative body, or citizen board. Survey results illustrate that a considerable number of state statutes (28) combine more than one method. Review of foster children is most often a statutory requirement.

Summary of Findings: *Case Review*

Court Review

Seventy-six percent of the states (38) provide a statutory mandate for court review of children in foster care (**Alaska, Arkansas, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri,**

Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, and Wisconsin).

Six additional states provide court review without a statutory basis (Alabama, Georgia, Maryland, Pennsylvania, Utah, and Wyoming).

Administrative Review

Twenty-one states require administrative review of children in foster care by statute (Alaska, Arizona, California, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Kentucky, Michigan, Minnesota, Mississippi, Nebraska, New Mexico, New York, Ohio, Oregon, Rhode Island, South Dakota, Virginia, and West Virginia).

Thirteen states with administrative review authorize it by regulation or rule (Alabama, Georgia, Iowa, Kansas, Louisiana, Maine, Maryland, Nebraska, New Jersey, North Carolina, Pennsylvania, Texas, and Wyoming).

Citizen Review

Thirteen of the states surveyed have established statutory citizen review boards (Arizona, Delaware, Iowa, Kentucky, Louisiana, Michigan, Nebraska, New Jersey, Oklahoma, Oregon, South Carolina, Tennessee, and Wisconsin).

Four states maintain review by rules or regulation (Georgia, Maryland, North Carolina, and Wyoming).

III. FOSTER CARE EXIT AND PERMANENT PLACEMENT ALTERNATIVES

Even with the provision of family services, some foster children will be unable to return home. For these children, permanent placement alternatives are necessary. Such alternatives include: adoption, guardianship, long-term foster care, independent living, and emancipation. The survey attempted to document states' efforts to move children out of temporary foster care by identifying procedures related to:

A) Freeing children for adoption;

B) Adoption assistance; and

C) Permanent placement alternatives.

A. Freeing Children for Adoption

When children cannot be returned to their parents, the preferable placement alternative is an adoptive home. This involves a court procedure to terminate parental rights and legally free children for adoption. All states have procedures for both voluntary and involuntary termination of parental rights. The latter is a more complex procedure requiring courts to weigh parental rights and preferences in terms of the child's needs. While the child welfare system has been criticized for lack of diligence in moving children into adoptive homes, legal barriers have sometimes actually stymied such efforts. State legislatures have a primary role in freeing children for adoption through the establishment of balance and clarity in statutes governing involuntary termination of parental rights. Clearly defined grounds for termination provide guidance to the court to prevent delays in freeing children for adoption, while protecting parental interests. The

survey identified the various statutory conditions, grounds, and considerations involved in states' involuntary termination procedures.

Summary of Findings: *Grounds for Involuntary Termination*

Parental Condition

Forty-one states consider the parents condition in termination statutes (**Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin,** and **Wyoming**).

Minnesota and **North Dakota** indicate consideration of parental condition in termination by case law; **Georgia** and **Texas** report pending legislation on the issue.

Parental Conduct Toward Child

Eighty-eight percent of the states (44) make parental conduct toward the child a statutory ground for termination (**Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin,** and **Wyoming**). **Georgia** reports pending legislation and **North Dakota** considers parental conduct via case law.

Parental Conduct During Child's Placement

Thirty-nine of the states consider parental conduct during the child's placement as grounds for termination (**Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin,** and **Wyoming**).

Georgia and **Texas** report pending legislation, while **Massachusetts** and **North Dakota** consider parental conduct toward a placed child via other means.

Length of Time Child Has Been Out of Parent's Custody

Thirty-nine of the states identified the duration of nonparental custody as grounds for termination (Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming).

Efforts to Reunify the Family

Approximately 70 percent of the states (35) consider by statute whether the state has tried to reunify the family (Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Washington, West Virginia, Wisconsin, and Wyoming).

Significant Relationships

Twenty-three of the states statutorily consider the child's significant relationships in termination proceedings (Arkansas, California, Colorado, Connecticut, Illinois, Iowa, Kentucky, Maine, Maryland, Minnesota, Mississippi, Missouri, Nevada, New Mexico, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming).

Child's Preference

Twenty states have statutes that take into consideration the child's preference (Alaska, California, Colorado, Connecticut, Illinois, Iowa, Maine, Mississippi, Missouri, New Mexico, Ohio, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming).

Best Interests of the Child

Eighty-two percent of the states (41) statutorily consider the best interests of the child (Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming).

B. Adoption Assistance

Adoption assistance is designed to remove financial barriers to the adoption of children with certain handicaps or other special needs. The majority of states provide some form of adoption subsidy for children previously labeled unadoptable due to age, handicap, or race. Subsidizing the adoption of such children is far less costly than institutional care. In addition, P.L. 96-272 provides reimbursement for states that operate programs for certain eligible children. An added benefit is Medicaid eligibility for adopted children who meet federal eligibility standards. The majority of states take advantage of this federal program. Some states have expanded adoption subsidy programs to include children ineligible for federal funds. Even without federal reimbursement, the cost of adoption subsidy compares favorably with institutional alternatives.

Summary of Findings: *Adoption Assistance*

Eligibility Guidelines

Forty-four of the responding states impose statutory guidelines for eligibility (**Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin,** and **Wyoming**).

Statutory Payment Procedures

Thirty states outline a method of securing payments by statute (**Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, South Carolina, Utah, Virginia, Washington, West Virginia,** and **Wyoming**).

Adoption Subsidies for Children Ineligible for Federal Reimbursement

A majority of states (39) have expanded their adoption subsidy programs to include certain children not eligible for federal reimbursement (**Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennyslvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Washington, West Virginia,** and **Wyoming**).

C. Permanent Placement Alternatives

Some foster children, due to their particular circumstances, cannot be returned home or adopted. Children nearing the age of majority who could be self-sufficient, children with strong ties to foster parents for whom adoption is not an option, and children who cannot cope with adoption require permanent placement alternatives. A range of alternatives provides the flexibility for agencies to meet the individual needs of the maximum number of children. The survey attempted to document alternatives available in each state.

1) Long-term Foster Care

Where diligent efforts to reunify the family or place a child for adoption have failed, long-term foster care may be a reasonable alternative. The placement is authorized by the court, or written agreement, and continues until the child reaches the age of majority. This provides a more permanent, stable option for the child, since the risk of arbitrary movement among foster homes is reduced. In addition, the foster parents and child remain eligible for foster care services and financial assistance. Problems can arise with this type of placement, if conflicting authority exists between the agency and foster parents. To reduce these conflicts, the court

authorization or agreement should clearly spell out the agency's, foster parents', and biological parents' rights and obligations.

Summary of Findings: *Long-term Foster Care*

Fifty-eight percent of the states (29) implement this placement alternative by statute (**Arizona, Arkansas, California, Colorado, Connecticut, Florida, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, West Virginia,** and **Wisconsin**).

2) *Guardianship*

Guardianship refers to a placement option in which an individual obtains unsupervised authority concerning the child. Without termination of parental rights, biological parents generally retain certain rights, including visitation and support obligations. In fact, maintaining contact between the biological parents and the child may be a prime reason for choosing guardianship as a permanent placement alternative. Federal foster care aid will be discontinued since agency supervision no longer occurs in such placements. Some states, such as **California** and **Washington**, allow continuation of state payments in certain guardianship cases. Guardianship falls somewhere between long-term foster care and adoption in terms of legal security and permanence.

Summary of Findings: *Guardianship*

Thirty-nine states listed guardianship as a statutory long-term placement alternative (**Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Virginia, Washington, West Virginia,** and **Wisconsin**).

3) *Independent Living*

The proportion of older youth in foster care has increased in recent years. Frequently, older youth are less likely to be adopted; and, if family reunification is unlikely, these youth will be discharged from foster care at age 18 with the expectation of caring for themselves. Unfortunately, some youth who have been in structured foster care settings for a number of years are ill-equipped to live autonomously. They have little experience in decision making or basic living skills, such as budgeting, obtaining housing, job seeking, or planning and preparing meals. Independent living programs are designed to assist youth in obtaining the necessary survival skills. Independent living programs range from the provision of basic skills training in foster care settings to subsidized housing or stipends that allow youth to live in the community and practice self-sufficiency skills with intensive supervision. As of October 1, 1986, additional federal funds are available for independent living programs provided by the states. A two-year initiative, included as part of the Consolidated Budget Reconciliation Act of 1985, entitles states to their share of $45 million annually to assist children in making the transition from foster care to independent living. Youth eligible for service include those 16 years of age or older on whose behalf Title IV-E foster care maintenance payments are being made. Less than half the states currently provide such services as part of their child welfare service delivery systems.

Summary of Findings: *Independent Living*

Only 22 percent of the states (11) provide independent living as a statutory alternative (**Arizona, Colorado, Florida, Illinois, Maine, Michigan, Oklahoma, Oregon, Pennsylvania, Virginia,** and **West Virginia**). In **Arizona, Colorado, Florida, Oklahoma, Oregon,** and **Virginia,** independent living is specifically mentioned in the statute; in the remaining states, authority is deduced from more general statutory language.

An additional ten states provide independent living alternatives by administrative regulation (Iowa, Louisiana, Maryland, Mississippi, Nebraska, New York, North Carolina, Texas, Utah, and Wyoming).

IV. CHILD WELFARE TRENDS

Substantial changes have taken place in child welfare over the past decade. Legislators have used a variety of avenues to influence the direction of child welfare. In addition to statutory policy changes, the appropriations process presents a means by which all state legislatures review child welfare programs. Due to the enormity of child welfare budgets, legislators increasingly are concerned with program operations, accountability, interagency coordination, and cost-effective service alternatives.

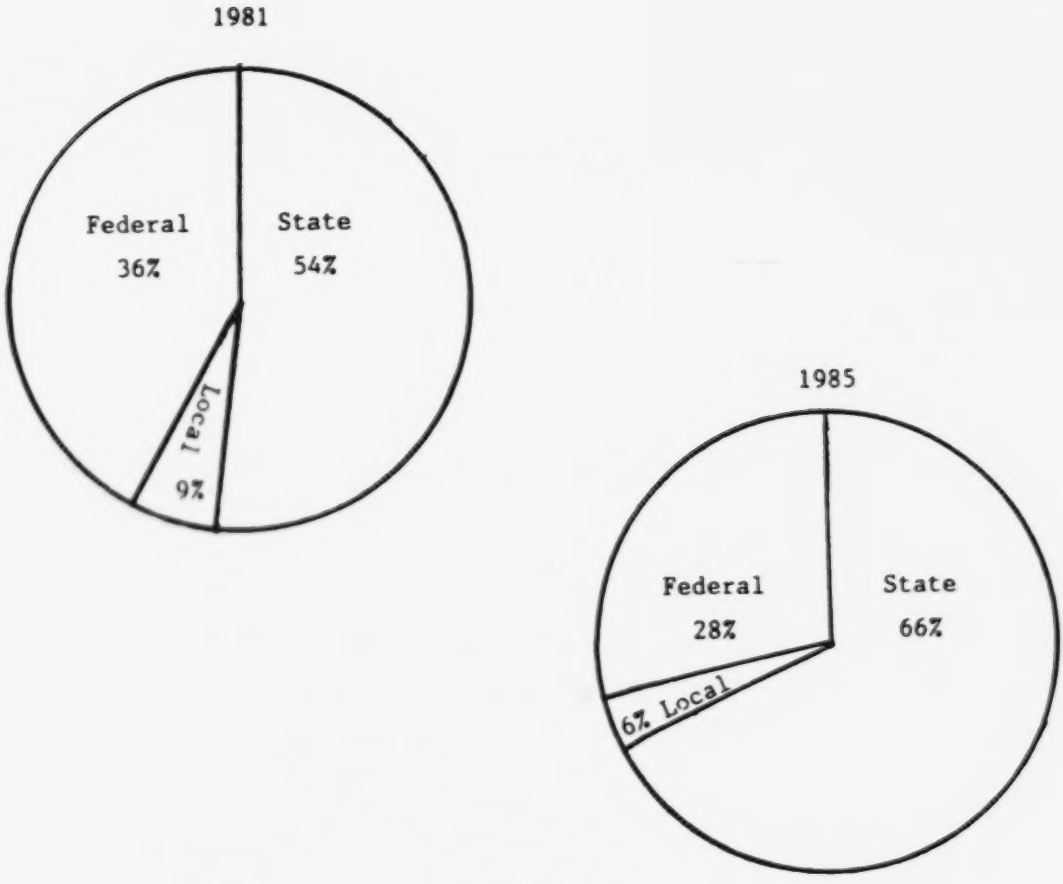
The survey attempted to explore the impact of recent permanency planning initiatives by gathering five-year data on child welfare expenditures and foster care population trends. Unfortunately, the state responses to these inquiries varied considerably. Only 16 states were able to present comprehensive financial data within the requested time frame. In addition, differences in the reported data preclude a state-by-state comparison. Still, some reporting states' data are noteworthy.

Data indicate that despite the federal fiscal incentives for child welfare reform contained in P.L. 96-272, the burden of financial costs for child welfare remains largely with the states. For the 16 reporting states, the federal share of total child welfare expenditures in 1981 amounted to 36 percent. In 1985 the federal share accounted for only 28 percent of these states' total child welfare expenditures (See Chart 2).

The shift in service emphasis among reporting states is also noteworthy. Since 1981 expenditures for foster care alternatives, including adoption assistance, have risen by 24 percent. Still, such alternatives represent only 38 percent of these states' total child welfare bills. In addition,

CHART 2

LOCAL, FEDERAL, AND STATE CHILD WELFARE EXPENDITURES FOR 16 STATES*



*Based on reports from: ARKANSAS, ARIZONA, CALIFORNIA, COLORADO, FLORIDA, IDAHO, ILLINOIS, IOWA, LOUISIANA, MISSOURI, NEW JERSEY, NORTH CAROLINA, OREGON, PENNSYLVANIA, SOUTH CAROLINA, and WASHINGTON.

total foster care expenditures have increased nearly twice as fast as reporting states' expenditures for alternatives (41 percent) during the same period.

Reports of child abuse, including substantiated reports of sexual abuse, have risen enormously in recent years with the logical effect of diluting permanency planning efforts. Despite this, many states were able to document significant improvements in their child welfare systems. As can be seen on Chart 3, foster care populations remained constant or were reduced in nearly half of the 22 states reporting data for both 1981 and 1985. In addition, 19 states reported reductions in the duration of foster care placements over time (See Chart 4).

Finally, states were asked for their opinions regarding major child welfare issues. The majority of states ranked concerns related to permanency planning first, including: standards for removal from home, prevention of adoption disruptions, legal barriers to adoption, family preservation services, and independent living programs for older adolescents. The top ten concerns articulated by the states in rank order are:

1. Permanency planning, family preservation, and foster care;
2. Decreased resources and Gramm-Rudman cuts;
3. Increased complexity and number of reported cases of child abuse;
4. Insufficient staff to handle child welfare caseload;
5. Prevention and early detection of child abuse;
6. Teen pregnancy and infant mortality;
7. Uniform services at local level and interagency service coordination;
8. Reform of juvenile court system;
9. Adequate day care; and
10. False child abuse reporting.

Clearly, child welfare issues remain a paramount concern in state legislatures. The effective operation of the child welfare system requires the

CHART 3

PERCENTAGE OF CHANGE IN AVERAGE NUMBER OF CHILDREN IN PLACEMENT, 1981-1985

	1981	1985	PERCENT CHANGE
Alabama	4,568	4,718	+3%
Arizona	2,349	2,581	+10%
Arkansas	1,908	1,409	-26%
California	27,937	31,365	+12%
Colorado	5,432	4,961	-9%
Florida	7,190	6,414	-11%
Georgia	4,201	4,566	+9%
Idaho	1,844	1,992	+8%
Illinois	12,030	13,112	+9%
Iowa	3,207	3,203	-0.1%
Louisiana	6,362	7,597	+19%
Maryland	8,420	5,225	-38%
Nevada	670	878	+31%
North Carolina	4,782	3,732	-22%
North Dakota	1,085	871	-20%
Oklahoma	2,252	2,818	+25%
Pennsylvania	12,176	12,901	+6%
Rhode Island	1,570	2,100	+34%
South Dakota	2,561	1,656	-35%
Tennessee	6,552	5,488	-16%
Virginia	7,114	5,342	-25%
Washington	5,837	6,248	+7%

CHART 4

AVERAGE PLACEMENT DURATION IN MONTHS

	1981	1985	PERCENT CHANGE
Arizona	37*	20	-46%
Arkansas	23	17	-26%
California	41	30	-27%
Colorado	90	40	-55%
Delaware	86**	20	-77%
Florida	39.6	32.4	-18%
Georgia	42	24	-43%
Idaho	17	15	-12%
Illinois	14	12	-14%
Iowa	12.2	7.6	-38%
Kentucky	40.3	28	-31%
Louisiana	47	44	-6%
Minnesota	54**	14	-74%
Missouri	70.8	30.4	-57%
Nevada	20.5	21	+2%
New York	45.6	38.1	-16%
North Dakota	23	17	-26%
Oregon	3.9	3.5	-10%
Pennsylvania	43.5	35.5	-18%
Washington	2.7	3.2	+19%
Wyoming	14	8	-43%

Note:
* 1982 Figure
** 1979 Figure

cooperation of all branches of government and numerous state agencies, as well as the provision of adequate services. To leave one component operating ineffectively can impact the entire system. Child abuse reporting statutes that provide courts, administrative agencies, and law enforcement personnel with clearly defined guidelines may not result in any significant long-term gain if not accompanied by extensive, adequately funded service programs for the family. Lawmakers are recognizing that legislative initiatives in the child welfare field offer significant social and economic benefits. Consequently, many legislators are expanding their roles in monitoring child welfare programs. State policymakers are in a unique position to monitor the success or failure of the entire child welfare system by way of legislative oversight of both statutory policy and service provision.

NCSL ASSISTANCE

NCSL offers technical assistance and information services on child welfare issues to aid legislators and staff free of charge. For more information, contact Shelley Smith, Project Manager, Child Welfare, NCSL, 1050 17th Street, Suite 2100, Denver, Colorado, 80265, (303)623-7800.

REFERENCES

Evidentiary and Procedural Trends in State Legislation and Other Emerging Legal Issues in Child Sexual Abuse Cases. Washington, D.C.: American Bar Association National Legal Resource Center for Child Advocacy and Protection, 1985.

Family Centered Services: A Model for Child Welfare Agencies. Oakdale, Iowa: National Resource Center on Family Based Services, 1983.

Keeping Families Together: The Case for Family Preservation. New York, New York: Edna McConnell Clark Foundation, 1985.

Key Legislation to Preserve the Family: The Reasonable Efforts Determination. Denver, Colorado: The National Conference of State Legislatures, September 1984.

The Legal Framework for Ending Foster Care Drift: A Guide to Evaluating and Improving State Laws Regulations and Court Rules. Washington, D.C.: American Bar Association National Legal Resource Center for Child Advocacy and Protection, 1983.

Minnesota Family-based Services Handbook. St. Paul, Minnesota: Family-based Services Task Force and Minnesota Department of Human Services, 1985.

A Permanent Home: The Issue of Children in Foster Care. Denver, Colorado: National Conference of State Legislatures, March 1984.

Protecting Child Victim/Witnesses: Sample Laws and Materials. Washington, D.C.: American Bar Association National Legal Resource Center for Child Advocacy and Protection, 1986.

Reasonable Efforts to Prevent Foster Placement. Washington, D.C.: American Bar Association National Legal Resource Center for Child Advocacy and Protection, 1985.

National Conference of State Legislatures
Children, Youth, and Families Program

The Children, Youth, and Families Program of the National Conference of State Legislatures (NCSL) is designed to meet the needs and interests of state legislatures in developing policy and programs related to children and families. The following services are available at no cost to legislators and staff:

- information clearinghouse
- research assistance,
- publications
- technical assistance.

Technical assistance includes testimony at committee hearings, briefing sessions for state legislators and their staffs, and actual bill drafting and analysis. Resources and expertise are provided by NCSL staff, national experts, and legislators.

Program Areas

Child Care/Early Childhood Education. The project is a joint effort of two NCSL programs: The Children, Youth, and Families Program and the Education Program. Funded by the Carnegie Corporation of New York, the project brings together legislators who work on child care policy development, typically the human services committee or its equivalent, with legislators who are concerned with education policy development, the education committee. Considering state needs and current research, the project assists state legislators in comprehensive program planning suitable for the individual state's policy goals.

Child Support and Paternity. There are over one million divorces each year--half of them affect children. For these children, state laws protecting their rights in custody, visitation, support, and paternity are vital. Child support enforcement is a cost-effective approach to assisting dependent children. Federal law requires that each state establish a child support enforcement program. Each program receives 66 percent of its funding from the federal government. The NCSL Child Support Enforcement Project, under contract with the federal Office of Child Support Enforcement, offers services to assist states in complying with P.L. 98-378.

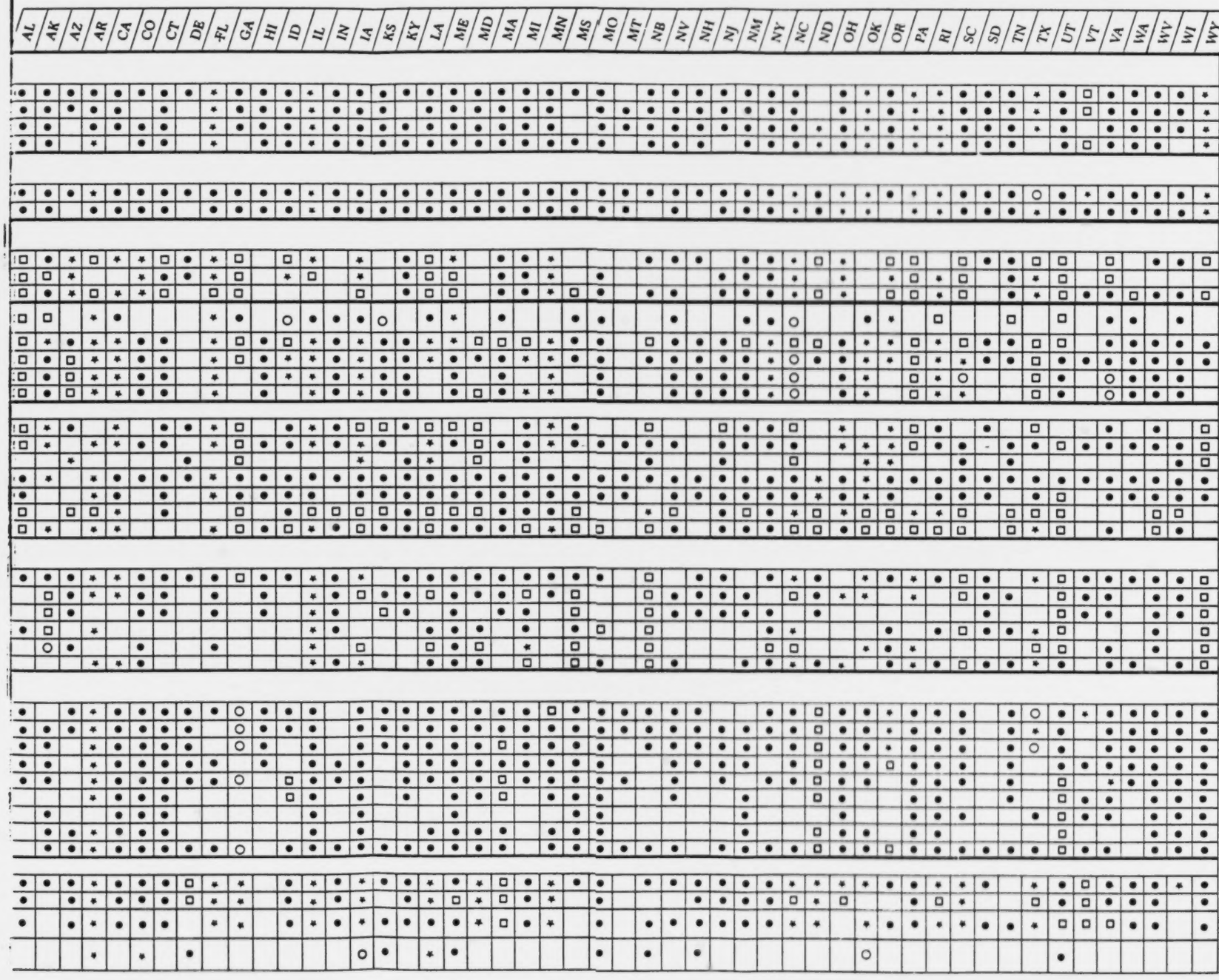
Child Welfare. Through a grant from the Edna McConnell Clark Foundation, the Child Welfare Project assists state legislators in improving state child welfare systems. State child welfare systems are the primary means by which states meet the needs of abused and neglected children. Foster care, or out-of-home placement, is the most expensive form of child welfare service and the most traumatic for the child. Consequently, many states are exploring service alternatives. Services to prevent out-of-home care, to reunify families, and to provide adoption and other placement activities have become major components of the child welfare system. Technical assistance is available in these and other areas aimed at assisting states in complying with the federal Adoption and Child Welfare Act.

For more information, contact Candace Romig, National Conference of State Legislatures, 1050 17th Street, Suite 2100, Denver, Colorado 80265, (303) 623/7800.

STATE CHILD WEI

Emergency Removal of Children from Home
Includes:
Procedural safeguards for children
Procedural safeguards for parents
Grounds for removal
Provisions for removal from other than home
Adjudication of a Child as Abused or Neglected
Includes:
Definitions of abuse and neglect
Specific grounds for removal of the child
Voluntary Placement of Children in Foster Care
Includes:
Written placement agreement
Judicial or administrative review of placement
Period of time a child may remain in placement without a court order
Judicial Determination That Reasonable Efforts Have Been Made To Prevent Removal or To Make It Possible for the Child To Return Home
Mandatory Written Case Plan
Services to Parents and Children
As an alternative to foster care placement
To aid reunification after placement
Review of Children in Foster Care
Administrative procedure
Judicial procedure
Citizen or volunteer
Legal Counsel Provided for Children in Abuse/Neglect Proceedings
Legal Counsel Provided for Parents in Abuse/Neglect Proceedings
Statewide Information System on Children in Foster Care
Protection of Visitation Rights of Parents with Children in Foster Care
Permanent Placement Alternatives When Return Home or Adoption Is Not Possible
Guardianship
Long-term foster care
Residential care
Emancipation
Independent living
Other
State Law Providing Involuntary Termination of Parental Rights
Factors Considered:
Parental condition (mental, alcohol, or drug abuse)
Parental conduct towards child (abandonment, abuse, neglect)
Parental conduct during child's placement (contact, home condition)
Length of time child has been out of parent's custody
Efforts of state to reunify family
Significant relationships
Child's preference
Alternative placements
Best interest of the child
Adoption Subsidy Law Provides:
Eligibility guidelines
Method for securing payments to adoptive families
Adoption subsidies when children in foster care are not eligible for federal reimbursement
State Participation in the Interstate Compact on Adoption and Medical Assistance

FARE STATUTE AND IMPLEMENTATION PATTEI



RNS

KEY

- ● Existing statute
- ◘ Means of implementation other than statute*
- ◘ Statutory and nonstatutory implementation
- ○ Plans for implementation or legislation

*NOTE "Other than statute," or "nonstatutory" implementation refers to agency rule, regulation, or policy; court rule; or case law.

METHODOLOGY

The information for this chart was derived from an NCSL survey on child welfare issues conducted during the winter of 1986. Statutory and agency rules indicated are current to December 1985.

For more information or to report state policy changes regarding this chart, call or write Shelley Smith, National Conference of State Legislatures (NCSL), 1050 17th Street, Suite 2100, Denver, Colorado 80265. (303) 623-7800.

TECHNICAL ASSISTANCE

Through a grant from the Edna McConnell Clark Foundation, the Child Welfare Project of NCSL provides on-site technical assistance to aid selected state legislators interested in improving their child welfare systems. For more information, call or write Shelley Smith, Project Manager, Child Welfare Project, Children and Youth Program, NCSL, 1050 17th Street, Suite 2100, Denver, Colorado 80265. (303) 623-7800.

Matrix developed by Ron Ours, NCSL Research Analyst.

Second Printing October 1986.

Copyright © 1986 by the National Conference of State Legislatures.